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PlusFour, Inc.

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

JANET B. HITCHCOCK,	)	Case No. 2:17-cv-01382-APG-GWF
	)	
Plaintiff,	)	
	)	STIPULATED PROTECTIVE
v.	)	ORDER
	)	
PLUSFOUR, INC.,	)	
	)	
Defendant.	)	

**1. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protection on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1   **2.   "CONFIDENTIAL" MATERIAL**

2       "Confidential" material may include the following documents and  
3   tangible things produced or otherwise exchanged<sup>1</sup>:

- 4       • Information regarding the financial affairs of the defendants  
5       including, without limitation, income, expenses, and bank  
6       account information;
- 7       • Information protected by Federal Rule of Civil Procedure 5.2;
- 8       • Information subject to confidentiality agreements with non-  
9       parties or any pre-existing confidentiality agreements between  
10      the parties;
- 11      • Information that qualifies as a "trade secret" pursuant to the law  
12      of the jurisdiction where the trade secret was created, is stored  
13      or maintained; and
- 14      • Commercial information that is treated as confidential by the  
15      producing party and harm to the producing party's business  
16      interests may reasonably result if disclosure is not limited to  
17      certain individuals in accordance with this Order;
- 18      • Information appropriately marked as "Confidential" pursuant  
19      to the terms of this Order.

20   **3.   SCOPE**

21       The protections conferred by this agreement cover not only  
22   confidential material (as defined above), but also (1) any information  
23   copied or extracted from confidential material; (2) all copies, excerpts,  
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25  
26   <sup>1</sup> These enumerated categories do not prejudice any party from challenging  
27   a confidentiality designation pursuant to Section 6 of this Order on the  
28   basis that confidential protection is not warranted, even if the information  
    falls within one of the enumerated categories.

1 summaries, or compilations of confidential material; and (3) any testimony,  
2 conversations, or presentations by parties or their counsel that might reveal  
3 confidential material. However, the protections conferred by this  
4 agreement do not cover information that is in the public domain or  
5 becomes part of the public domain through trial or otherwise.

6 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

7 **4.1 Basic Principles.** A receiving party may use confidential  
8 material that is disclosed or produced by another party or by a non-party  
9 in connection with this case only for prosecuting, defending, or attempting  
10 to settle this litigation. Confidential material may be disclosed only to the  
11 categories of persons and under the conditions described in this agreement.  
12 Confidential material must be stored and maintained by a receiving party  
13 at a location and in a secure manner that ensures that access is limited to  
14 the persons authorized under this agreement.

15 **4.2 Disclosure of "CONFIDENTIAL" Information or Items.**

16 Unless otherwise ordered by the court or permitted in writing by the  
17 designating party, a receiving party may disclose any confidential material  
18 only to:

19 (a) the receiving party's counsel of record in this action, as  
20 well as employees of counsel to whom it is reasonably necessary to disclose  
21 the information for this litigation;

22 (b) the officers, directors, and employees (including in house  
23 counsel) of the receiving party to whom disclosure is reasonably necessary  
24 for this litigation, unless the parties agree that a particular document or  
25 material produced is for Attorney's Eyes Only and is so designated;

26 (c) experts and consultants to whom disclosure is reasonably  
27 necessary for this litigation and who have signed the "Acknowledgment  
28 and Agreement to Be Bound" (Exhibit A);

1 (d) the court, court personnel, and court reporters and their  
2 staff;

3 (e) copy or imaging services retained by counsel to assist in  
4 the duplication of confidential material, provided that counsel for the party  
5 retaining the copy or imaging service instructs the service not to disclose  
6 any confidential material to third parties and to immediately return all  
7 originals and copies of any confidential material;

8 (f) during their depositions, witnesses in the action to whom  
9 disclosure is reasonably necessary and who have signed the  
10 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless  
11 otherwise agreed by the designating party or ordered by the court. Pages  
12 of transcribed deposition testimony or exhibits to depositions that reveal  
13 confidential material must be separately bound by the court reporter and  
14 may not be disclosed to anyone except as permitted under this agreement;

15 (g) the author or recipient of a document containing the  
16 information or a custodian or other person who otherwise possessed or  
17 knew the information;

18 (h) other parties, or counsel of record for other parties, in this  
19 lawsuit who have stipulated to this Order or whose clients are subject to  
20 this Order (this exception does not include confidential information or  
21 statements made or exchanged in connection with a mediation or  
22 settlement to the extent they are considered privileged or protected from  
23 discovery under federal or state law); or

24 (i) a Mediator and the Mediator's staff or other Dispute  
25 Resolution professional who signed the "Acknowledgment and Agreement  
26 to Be Bound" (Exhibit A) in order to conduct a mediation between some or  
27 all of the parties.  
28

1           **4.3    Filing Confidential Material.** Before filing confidential  
2 material or discussing or referencing such material in court filings, the  
3 filing party shall make reasonable effort to confer with the designating  
4 party to determine whether the designating party will remove the  
5 confidential designation, whether the document can be redacted, or  
6 whether a motion to seal or stipulation and proposed order is warranted.

7           **5.    DESIGNATING PROTECTED MATERIAL**

8           **5.1    Exercise of Restraint and Care in Designating Material for**  
9 **Protection.** Each party or non-party that designates information or items  
10 for protection under this agreement must take care to limit any such  
11 designation to specific material that qualifies under the appropriate  
12 standards. The designating party must designate for protection only those  
13 parts of material, documents, items, or oral or written communications that  
14 qualify, so that other portions of the material, documents, items, or  
15 communications for which protection is not warranted are not swept  
16 unjustifiably within the ambit of this agreement.

17           Mass, indiscriminate, or routinized designations are prohibited.  
18 Designations that are shown to be clearly unjustified or that have been  
19 made for an improper purpose (*e.g.*, to unnecessarily encumber or delay  
20 the case development process or to impose unnecessary expenses and  
21 burdens on other parties) expose the designating party to sanctions.

22           If it comes to a designating party's attention that information or items  
23 that it designated for protection do not qualify for protection, the  
24 designating party must promptly notify all other parties that it is  
25 withdrawing the mistaken designation.

26           **5.2    Manner and Timing of Designations.** Except as otherwise  
27 provided in this agreement (*see, e.g.*, second paragraph of section 5.2  
28 below), or as otherwise stipulated or ordered, disclosure or discovery

1 material that qualifies for protection under this agreement must be clearly  
2 so designated before or when the material is disclosed or produced.

3 (a) Information in documentary form: (e.g., paper or  
4 electronic documents and deposition exhibits, but excluding transcripts of  
5 depositions or other pretrial or trial proceedings), the designating party  
6 must affix the word "CONFIDENTIAL" to each page that contains  
7 confidential material. If only a portion or portions of the material on a  
8 page qualifies for protection, the producing party also must clearly identify  
9 the protected portion(s) (e.g., by making appropriate markings in the  
10 margins).

11 (b) Testimony given in deposition or in other pretrial or trial  
12 proceedings: the parties must identify on the record, during the  
13 deposition, hearing, or other proceeding, all protected testimony, without  
14 prejudice to their right to so designate other testimony after reviewing the  
15 transcript. Any party or non-party may, within fifteen days after receiving  
16 a deposition transcript, designate portions of the transcript, or exhibits  
17 thereto, as confidential.

18 (c) Other tangible items: the producing party must affix in a  
19 prominent place on the exterior of the container or containers in which the  
20 information or item is stored the word "CONFIDENTIAL." If only a  
21 portion or portions of the information or item warrant protection, the  
22 producing party, to the extent practicable, shall identify the protected  
23 portion(s).

24 **5.3 Inadvertent Failures to Designate**. If timely corrected, an  
25 inadvertent failure to designate qualified information or items does not,  
26 standing alone, waive the designating party's right to secure protection  
27 under this agreement for such material. Upon timely correction of a  
28 designation, the receiving party must make reasonable efforts to ensure

1 that the material is treated in accordance with the provisions of this  
2 agreement.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 **6.1 Timing of Challenges.** Any party or non-party may challenge  
5 a designation of confidentiality at any time. Unless a prompt challenge to a  
6 designating party's confidentiality designation is necessary to avoid  
7 foreseeable, substantial unfairness, unnecessary economic burdens, or a  
8 significant disruption or delay of the litigation, a party does not waive its  
9 right to challenge a confidentiality designation by electing not to mount a  
10 challenge promptly after the original designation is disclosed.

11 **6.2 Meet and Confer.** The parties must make reasonable effort to  
12 resolve any dispute regarding confidential designations without court  
13 involvement. Any motion regarding confidential designations or for a  
14 protective order must include a certification, in the motion or in a  
15 declaration or affidavit, that the movant has engaged, or reasonably  
16 attempted to engage, in a good faith meet and confer conference with other  
17 affected parties in an effort to resolve the dispute without court action. The  
18 certification must list the date, manner, and participants to the conference.  
19 A good faith effort to confer requires a face-to-face meeting or a telephone  
20 conference.

21 **6.3 Judicial Intervention.** If the parties cannot resolve a challenge  
22 without court intervention, the designating party may file and serve a  
23 motion to retain confidentiality. The burden of persuasion in any such  
24 motion shall be on the designating party. Frivolous challenges, and those  
25 made for an improper purpose (*e.g.*, to harass or impose unnecessary  
26 expenses and burdens on other parties) may expose the challenging party  
27 to sanctions. All parties shall continue to maintain the material in question  
28 as confidential until the court rules on the challenge.

1 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
2 **PRODUCED IN OTHER LITIGATION, OR REQUESTED BY ANY NEW**  
3 **PARTY TO THIS LITIGATION**

4 If a party is served with a subpoena or a court order issued in other  
5 litigation that compels disclosure of any information or items designated in  
6 this action as "CONFIDENTIAL," that party must:

7 (a) promptly notify the designating party in writing and  
8 include a copy of the subpoena or court order;

9 (b) promptly notify in writing the party who caused the  
10 subpoena or order to issue in the other litigation that some or all of the  
11 material covered by the subpoena or order is subject to this agreement.  
12 Such notification shall include a copy of this agreement; and

13 (c) cooperate with respect to all reasonable procedures  
14 sought to be pursued by the designating party whose confidential material  
15 may be affected.

16 If any additional parties are added into this litigation and they  
17 request access or copies of CONFIDENTIAL material, those additional  
18 parties shall be subject to each and every of the restrictions on such  
19 CONFIDENTIAL information set forth herein.

20 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

21 If a receiving party learns that, by inadvertence or otherwise, it has  
22 disclosed confidential material to any person or in any circumstance not  
23 authorized under this agreement, the receiving party must immediately (a)  
24 notify in writing the designating party of the unauthorized disclosures, (b)  
25 use its best efforts to retrieve all unauthorized copies of the protected  
26 material, (c) inform the person or persons to whom unauthorized  
27 disclosures were made of all the terms of this agreement, and (d) request  
28

1 that such person or persons execute the "Acknowledgment and Agreement  
2 to Be Bound" that is attached hereto as Exhibit A.

3 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
4 **OTHERWISE PROTECTED MATERIAL**

5 When a producing party gives notice to receiving parties that certain  
6 inadvertently produced material is subject to a claim of privilege or other  
7 protection, the obligations of the receiving parties are those set forth in  
8 Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended  
9 to modify whatever procedure may be established in an e-discovery order  
10 or agreement that provides for production without prior privilege review.  
11 Parties shall confer on an appropriate non-waiver order under Fed. R. Evid.  
12 502.

13 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

14 Within 60 days after the termination of this action, including all  
15 appeals, each receiving party must return all confidential material to the  
16 producing party, including all copies, extracts and summaries thereof.  
17 Alternatively, the parties may agree upon appropriate methods of  
18 destruction.

19 Notwithstanding this provision, counsel are entitled to retain one  
20 archival copy of all documents filed with the court, trial, deposition, and  
21 hearing transcripts, correspondence, deposition and trial exhibits, expert  
22 reports, attorney work product, and consultant and expert work product,  
23 even if such materials contain confidential material. The confidentiality  
24  
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obligations imposed by this agreement shall remain in effect until a  
designating party agrees otherwise in writing or a court orders otherwise.

MORRIS LAW GROUP

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PlusFour, Inc.

Attorneys for Plaintiff  
Janet B. Hitchcock

ORDER

IT IS SO ORDERED.

George Foley Jr.  
UNITED STATES MAGISTRATE JUDGE

DATED: August 15, 2017

**EXHIBIT A**  
**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under  
 penalty of perjury that I have read in its entirety and understand the  
 Stipulated Protective Order that was issued by the United States District  
 Court for the District of Nevada in the case of *Janet B. Hitchcock v. PlusFour, Inc.*, Case No. 2:17-cv-01382-APG-GWF. I agree to comply with and to be  
 bound by all the terms of this Stipulated Protective Order and I understand  
 and acknowledge that failure to so comply could expose me to sanctions  
 and punishment in the nature of contempt. I solemnly promise that I will  
 not disclose in any manner any information or item that is subject to the  
 Stipulated Protective Order to any person or entity except in strict  
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District  
 Court for the District of Nevada for the purpose of enforcing the terms of  
 this Stipulated Protective Order, even if such enforcement proceedings  
 occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_